Office-Supreme Court, U.S.
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MAR 1 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

NO. 82-1193

MOHAMMAD H. MARASHI, Petitioner

-v-

FORBES FURNITURE COMPANY and
PEERLESS INSURANCE COMPANY,
Respondents.

On Petition for Writ of Certiorari to the Florida District Court of Appeal, Fifth District

BRIEF FOR RESPONDENT, FORBES FURNITURE COMPANY, IN OPPOSITION TO THE PETITION FOR CERTIORARI

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Counsel for Respondent

February 28, 1983

QUESTIONS PRESENTED

1. Whether the Supreme Court of the United States has jurisdiction to review the Petition for Certiorari filed by Petitioner.

a. Whether Petitioner timely filed his Petition for Certiorari to review Orders dated April 7, 1982, and August 26, 1982.

b. Whether the Court has jurisdiction to review Orders dated April 7, 1982, and August 26, 1982, coming from a Court which is not the highest Court in the State of Florida.

c. Whether Petitioner has carried his burden to show that the State Court decided this case without any independent or adequate State grounds.

d. Whether the questions raised by Petitioner are so substantial as to support jurisdiction from the State Court.

e. Whether the Florida Supreme Court correctly concluded on October 5, 1982, that it was without jurisdiction and dismissed Petitioner's appeal and specifically precluded Petitioner from attempting to move the matter for rehearing.

2. Whether Petitioner has been denied due process of the law.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

NO. 82-1193

MOHAMMAD H. MARASHI, Petitioner

-v-

FORBES FURNITURE COMPANY and
PEERLESS INSURANCE COMPANY,
Respondents.

On Petition for Writ of Certiorari to
the Florida District Court of Appeal,
Fifth District

BRIEF FOR RESPONDENT, FORBES FURNITURE COMPANY, IN OPPOSITION TO THE PETITION FOR CERTIORARI

Respondent, FORBES FURNITURE COMPANY, hereinafter referred to as "Respondent", respectfully prays that the Court dismiss the Petition for Writ of Certiorari, filed by Petitioner MOHAMMAD H. MARASHI, hereinafter referred to as "Petitioner", render summary affirmance or deny the Petition for Writ of Certiorari based on the hereinafter stated grounds.

OPINION BELOW

Petitioner asserts that he is seeking review of Orders of the Florida District Court of Appeal, Fifth District, dated April 7, 1982, and August 26, 1982. Petitioner does not seek review of the Order of the Supreme Court of Florida dated October 5, 1982.

In the Order dated April 7, 1982, the Florida District Court of Appeal, Fifth District, entered a per curium decision, without opinion. In the Order dated August 26, 1982, the Florida District Court of Appeal, Fifth District, dismissed without opinion Petitioner's attempt to appeal an order of the Trial Court denying Petitioner's Motion for Rehearing.

In the Order dated September 30, 1982, the Florida Supreme Court dismissed without opinion Petitioner's Petition for Review of the Order of The Florida District Court of Appeal, Fifth District, dated August 26, 1982. In the Order dated

October 5, 1982, the Supreme Court of Florida dismissed without opinion Petitioner's Petition for Review of the Order of August 26, 1982, and specifically precluded Petitioner from filing a Motion for Rehearing. Copies of all orders mentioned herein appear in the Appendix.

JURISDICTION

Petitioner does not meet the standards of 28 U.S.C. §1257(3), the statute upon which he attempts to invoke the basis of this Court's jurisdiction.

First, Petitioner is not seeking review of a Final Judgment or decree of the highest Court in the State. Instead, Petitioner ignores the Order of the Florida Supreme Court, dated October 5, 1982, and requests review of the two Orders, dated April 7, 1982, and August 26, 1982, of the Florida District Court of Appeal, Fifth District, the Court one level below the Florida Supreme Court.

Second, the grounds enumerated in 28 U.S.C. §1257(3), were not specially set up or claimed during the trial proceedings. Petitioner only requested a continuance and did not specially set up or claim any title, right, privilege or immunity under the Constitution, treaties or statutes of the United States of America.

In seeking review of the Orders of the Florida District Court of Appeal, Fifth District, dated April 7, 1982, and August 26, 1982, Petitioner does not comply with the provisions of 28 U.S.C. §2101(c).

Petitioner, in his brief at Page 2, under the heading "Jurisdiction", states that, "The Florida Supreme Court dismissed Petitioner's timely Appeal on October 5, 1982, and this Petition was filed within 90 days of that date." On Pages 1 and 23 of his Brief, Petitioner requests that the Court review the Orders of the Florida District Court of Appeal, Fifth District,

dated April 7, 1982, and August 26, 1982. Petitioner does not seek review of the Order dated October 5, 1982, entered by the Florida Supreme Court. Pursuant to 28 U.S.C. §2101(c), Petitioner's application for review of the Orders dated April 7, 1982, and August 26, 1982, is not timely and should be dismissed.

Petitioner has filed three (3) appeals in this case, not including this one. All of the aforementioned appeals filed by Petitioner resulted in the Appellate Courts denying Petitioner the relief requested without opinion. Thus, all of the State Court litigation was disposed of without any opinion to indicate whether any federal grounds were chosen by the State Court. Consequently, the burden falls upon Petitioner to establish that there was no independent and adequate state grounds. As previously indicated herein, the record clearly shows that the decision of the Trial Court was entirely

based on independent and adequate state grounds. For these reasons, this Court should dismiss this case. See: Allen v. Arguimbau, 198 U.S. 149, 25 S. Ct. 622 (1905); Durley v. Mayo, 351 U.S. 277, 76 S. Ct. 806 (1956); and Walter A. Wood Mowing & Reaping Machine Co. v. Skinner, 139 U.S. 293, 11 S. Ct. 528 (1891).

Further, it is clear that the Order of the Florida Supreme Court was also grounded on independent and adequate state grounds. The Florida Supreme Court dismissed Petitioner's Appeal with an Order dated September 30, 1982, relying on St. Paul Title Insurance Corp v. Davis, 392 So.2d 1304 (Fla. 1980), which followed Jenkins v. State, 385 So.2d 1356 (Fla. 1980). In Jenkins, supra, the Florida Supreme Court dismissed an appeal on the basis that it lacked jurisdiction to review the Florida District Court of Appeal's decision, which read in its entirety, "Per Curium Affirmed", even though the

decision of the District Court was accompanied by a dissenting opinion. The Florida Supreme Court stated that it lacked jurisdiction to review per curium decisions of the several District Courts of Appeal of the State rendered without opinion, regardless of whether they are accompanied by a dissenting or concurring opinion.

The Florida Supreme Court entered another Order on October 5, 1982, dismissing Petitioner's Appeal without leave for Petitioner to move for rehearing. The Court relied on Pena v. Tampa Federal Savings & Loan Assoc., 385 So.2d 1370 (Fla. 1980). As in St. Paul, supra, the Court in Pena followed Jenkins, supra.

In addition to the fact that the State Courts decided the case entirely on independent and adequate state grounds, the questions raised by Petitioner are not so substanital as to support jurisdiction from the State Court. Considered in its

most favorable light, all of the questions presented by Petitioner could have been resolved, had Petitioner availed himself of the provisions contained in Fla. R. Civ. P. 1.330(a)(3), which would have permitted Petitioner to have his deposition taken for use at trial. The record does not raise a bona fide, substantial Federal question.

The substantial question doctrine relates to questions arising on writs of error from State Courts where, aside from the Federal status of the parties to the action or the inherent nature of the Federal right which is sought to be vindicated, jurisdiction is to be determined by ascertaining whether the record raises a bona fide Federal question. In that class of cases, this Court not only may, but it is its duty to, determine whether in truth and in fact a real Federal question arises on the record. Swafford v. Templeton, 185

U.S. 487, 22 S. Ct. 783 (1902). The questions raised by Petitioner within his Brief are not substantial Federal questions and do not meet this test.

Since the Federal questions raised in the Petition by Petitioner were not raised in nor were they discussed by the State Courts, it would be assumed that they had not been properly presented. Fuller v. State of Oregon, 417 U.S. 40, 95 S. Ct. 2116 (1974). Therefore, based on all of the grounds cited herein, the United States Supreme Court does not have jurisdiction and should dismiss the Petition for Writ of Certiorari filed by Petitioner, or enter Order of Summary Affirmance or deny the Petition for Writ of Certiorari.

STATEMENT OF THE CASE AND OF THE FACTS

The Statement of this Case and of the Facts, presented by Petitioner, in many respects is misleading and erroneous. Respondent shall, therefore, present a brief Statement of the Case and of the Facts to aid the Court in understanding what has transpired. This Statement serves to expand and illuminate those instances that Petitioner chose to ignore or not detail.

On October 3, 1980, Petitioner's Affidavit in Opposition to Respondent's Summary Judgment was stricken from the record because it had not been signed by Petitioner as stated, but was signed by Petitioner's son.

On October 10, 1980, Petitioner then filed an Amended Affidavit in Opposition signed by one of his sons as his attorney-in-fact. Petitioner's second Motion for Continuance was denied on October 15, 1980, because Petitioner mistakenly thought the case was not at issue.

Petitioner erroneously believed that Respondent's Amendment to Complaint was an Amended Complaint.

On October 17, 1980, Petitioner filed an Affidavit in Opposition to Respondent's Motion for Summary Judgment which was signed by Petitioner's son and which alleged a factual dispute between the parties.

On October 20, 1980, the Trial Court ruled that the Affidavit in Opposition to Respondent's Motion for Summary Judgment filed October 17, 1980, created an issue of material facts as to two (2) items of furniture. The Court ruled that the Amended Affidavit in Opposition filed October 10, 1980, was legally insufficient. The Court granted Summary Judgment for Respondent except as to the two (2) items of furniture and the amount of attorney's fees, if any.

By Order dated October 3, 1980, Petitioner was permitted to file a Counterclaim. Because it was not timely filed,

it was subject to a Motion to Strike and was appropriately stricken from the record on December 1, 1980.

At trial on January 13, 1981, Petitioner voluntarily withdrew his Affirmative Defense which raised the issue of rejection as to the two items of furniture.

Petitioner advised the Court that the only issue left was attorney's fees and then moved for a Continuance for the third time.

The Trial Judge denied the Motion noting that if Petitioner's testimony was necessary it could have been secured prior to the time of trial by deposition.

No witnesses appeared at the trial and no testimony was presented on behalf of Petitioner not because he was deprived of due process of law, but because Petitioner chose not to avail himself of the applicable provisions in the Florida Rules of Civil Procedure which would have insured presentation of his case.

ARGUMENT

Petitioner brings his Petition for Review on the basis that the Trial Court denied Petitioner a Continuance which Petitioner argues had the same effect as if the Trial Judge ruled that Petitioner could not be present, present evidence, and cross-examine. Petitioner's assertion is incorrect. However, Petitioner is correct in his contention that he is entitled to due process of the law. The facts of the case and the law applicable thereto do not support Petitioner's conclusion that he was denied due process of the law. Petitioner attempts to assert a deprivation of due process of law to rationalize his inattention, misfeasance and nonfeasance in dealing with the litigation at hand. Rather, Petitioner was accorded all protection contemplated by the Fifth and Fourteenth Amendments to the U. S. Constitution and Art. I, §9, Fla. Const.

Petitioner moved for continuances three (3) times during the course of the Trial Court proceedings. The first Motion was granted in order to allow Petitioner more time to prepare Affidavits to present in oppostion to Respondent's Motion for Summary Judgment. The Trial Court continued Respondent's Summary Judgment hearing for 17 days. This continuance was granted because Petitioner was out of the country and more time was needed to obtain Affidavits in Opposition. The Affidavit Petitioner originally filed was stricken from the record because it had not been signed by Petitioner as stated, but was signed by Petitioner's son.

The second Motion to Continue was also made in connection with the same Motion for Summary Judgment filed by Respondent. Petitioner also filed a Motion to Dismiss at the same time.

Because Respondent had filed an Amendment to Complaint rather than an

Amended Complaint, because Petitioner's right to raise the objections included in his Motion to Dismiss had been waived in his prior Answer, and because this was the only ground for the Motion to Continue hearing, the Trial Court correctly struck the Motion to Dismiss and denied the second Motion to Continue the hearing.

The third Motion for Continuance was presented orally at the trial on January 13, 1981, and was based on Fla. R. Civ. P. 1.460, unavailability of a witness, but made no showing when the witness might be available. This is required by the rule.

Although this rule gives the Court discretion to grant a continuance, certain facts must be recognized.

This action had been pending for almost seven (7) months, and in order to defend the claim Petitioner should have known his testimony could be important. No Affidavits were ever submitted from Petitioner himself nor was his deposition ever taken.

On several occasions, the Trial Court pointed out to Petitioner's counsel that such Affidavit or deposition should be obtained if he felt such testimony was necessary. This is indicated by the comments of the Trial Judge, the Honorable Maurice M. Paul, now U.S. District Court Judge, Northern District of Florida. Judge Paul responded to the oral Motion for Continuance found on Page 5 of the Trial transcript as follows:

> "I'll deny it. We've talked about this before. I'm sure there's provisions. You could have had his testimony taken over there if you really need it. Besides, there is no assurance that he'll every get back in this country. So, we can't keep the trial open forever. So, we'll go ahead and proceed."

Fla. R. Civ. P. §1.330(3) provides:

> The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the

deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desireable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open Court, to allow the deposition to be used; or (F) the witness is an expert or skilled witness.

The rule was intended for just such an occasion as was presented in the instant case, yet no attempts were made to utilize such provision.

Finally, prior to making the Motion to Continue, Petitioner had voluntarily chosen to drop its Affirmative Defense, which he had the burden to prove. The denial of the Motion to Continue therefore, did not prejudice Petitioner.

Throughout the proceedings, Petitioner was granted every fairness provided by the law. Respondent brought a proper Motion which was granted only as to those issues where there was no material dispute

as to fact. Petitioner had notice of the hearing and time in which to prepare his opposition to it. In light of the foregoing, Petitioner was not denied due process of the law.

It should also be noted that the Affidavit of Jeffrey A. Bernstein found in Petitioner's Appendix, Page 12, is dated April 28, 1981, and was therefore, obtained more than three (3) months after the conclusion of the Trial Court proceedings. Further, the Affidavit and the documents relating to it, found on Pages 12-22 of Petitioner's Appendix, were never submitted until the Appeal filed on February 25, 1981, with the Florida District Court of Appeal, Fifth District. The Affidavit and documents should not be considered by the Court and should not be a part of the record in this case.

Further, Petitioner was not denied due process of the law when the Trial Judge awarded Respondent attorney's fees

because Petitioner failed to present a meritorious defense.

The Trial Court's award of attorney's fees pursuant to §57.105, Fla. Stat., was proper and in keeping with the ruling in Allen v. Estate of Dutton, 384 So.2d 171, (Fla. 5th DCA 1980). The Allen case not only holds that the requirement of a finding of a total or absolute lack of justiciable issue is tantamount to a finding that the action is frivolous, but it goes further to explain the definition of frivolous through the use of Treat v. State, ex rel. Mitton, 163 So. 833 (1935). This definition of a "frivolous appeal" states in part that:

> "It is one that is so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect whatsoever that it can ever succeed."

This aptly describes the defenses of Petitioner, which the Trial Court found to be "paper defenses" (A-1).

Petitioner states that he was unable to present evidence at trial despite due diligence to do so.

Petitioner was not diligent. Nowhere in the file does there appear an Affidavit signed by Petitioner prior to Trial. Nowhere in the file does there appear a deposition of Petitioner. It does not appear that Petitioner made any attempt to review the documentation involved in this case prior to Trial. The documents involved in this matter are relatively few and due diligence would have necessitated the forwarding of these documents to Petitioner for his review. Apparently, this was not done. The decisions of the Florida District Court of Appeal, Fifth District, and the Florida Supreme Court affirm the correctness with which the Trial Court dealt with this matter. Petitioner was not denied due process of law. He simply did not act in a diligent manner and take advantage of the Florida Rules of Civil

Procedure, and to comply with those rules when compliance was required.

None of the decisions relied on by Petitioner are applicable and are all distinguishable on their facts. It is most important to note that Petitioner was not barred from participating in this litigation. Petitioner could have presented his case through the means previously cited herein. However, Petitioner refused to employ the remedies provided by the American judicial system that where available to him so that he could defend himself, bring claims and address grievances. Now he wants this Court to find that he was deprived of due process, when the wrongs of which Petitioner complains resulted from his failure to use due diligence in handling his case.

CONCLUSION

For all of the reasons cited previously within this brief, Respondent respectfully requests that the Court dismiss the Petition for Writ of Certiorari filed by Petitioner, render summary affirmance, or deny the Petition for Writ of Certiorari.

RESPECTFULLY SUBMITTED,

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Counsel for Respondent

February 28, 1983

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

NO. 82-1193

MOHAMMAD H. MARASHI, Petitioner

-v-

FORBES FURNITURE COMPANY and
PEERLESS INSURANCE COMPANY,
Respondents.

APPENDIX

Harry W. Lawrence, Esq.
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February 28, 1983

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IN THE CIRCUIT COURT
OF ORANGE COUNTY,
FLORIDA

CIVIL NO. 80-6619

FORBES FURNITURE COMPANY, a Florida corporation, d/b/a FURNITURE SHOWCASE,

Plaintiff,

vs

MOHAMMAD H. MARASHI,

Defendant.
_____/

ORDER

After due notice by or to all parties affected, a hearing was held before the court with respect to the matters disposed of by this order.

Upon consideration it is ORDERED that:

Upon the evidence presented, the court finds that the Plaintiff is entitled to recover attorney fees in this proceeding under Fla. Stat. 57.105(1979), there being an absence of law or fact on the paper defense presented by the Defendant.

Plaintiff is entitled to recover the sums of $24,723.23 as amount due from the Defendant, plus costs of $354.62, attorney fees of $7,000.00, and is entitled to return of three (3) Ficks Bar Stools.

In accordance with Fla. Stat. §76.31 (1979) the judgment to be entered herein shall be entered against the surety, PEERLESS INSURANCE COMPANY, in the amount of $30,341.54.

The value of the property retaken by the Defendant under the forthcoming bond is in excess of $25,000.00, and is the sum set forth in "exhibit one" to the Order for Writ of Attachment dated June 27, 1980.

DONE AND ORDERED in chambers at Orlando, Florida this 20th day of January, 1981.

Orlando, Florida,

/s/ Maurice M. Paul
Judge

Copies:
David M. Landis, Esq., 605 E. Robinson St., Orlando, Fla., 32801
Kenneth M. Meer, Esq., P. O. Drawer B, Winter Park, Florida, 32790

27-64

IN THE CIRCUIT COURT
OF ORANGE COUNTY,
FLORIDA

CIVIL NO. 80-6619

FORBES FURNITURE COMPANY,
a Florida corporation,
d/b/a FURNITURE SHOWCASE,

Plaintiff,

vs

MOHAMMAD H. MARASHI,

Defendant.
_____/

FINAL JUDGMENT

This action was tried before the Court. On the evidence that was presented and upon consideration,

IT IS ADJUDGED:

1. Plaintiff shall recover from Defendant, MOHAMMAD H. MARASHI, the sum of $24,723.23 as payment due Plaintiff by Defendant, plus interest in the amount of $917.70, plus costs of $354.62, plus attorney's fees in the amount of $7,000.00,

said amount totaling $32,995.55 for which let execution issue.

2. The surety, Peerless Insurance Company, pursuant to Release of Attachment Bond, is holding the sum of $30,341.54 for purposes of assisting in payment of any judgment entered herein against Defendant. Therefore, in accordance with Florida Statutes §76.31, the Plaintiff shall have and recover from Peerless Insurance Company the sum of $30,314.54 for which let execution issue.

3. The value of the property rotaken by Defendant under the above referenced bond is in excess of $25,000.00, and is the sum set forth in Exhibit "1" to the Order for Writ of Attachment dated June 27, 1980.

4. Plaintiff is lawfully entitled, pursuant to Florida Statutes 78.19, to the

return of three (3) Ficks Bar Stools, value of which according to Plaintiff is approximately $750.00, and Defendant shall make such property available to the Plaintiff and voluntarily surrender possession of same.

DONE AND ORDERED at Orlando, Florida this 26th day of January, 1981.

/s/ Maurice M. Paul
Circuit Judge

Copies:
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Kenneth M. Meer, Esq., P. O. Drawer B, Winter Park, Florida, 32790
Peerless Insurance Company, c/o Way, Sanderson & Jones, 611 N. Magnolia, Orlando, Florida

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT

MOHAMMAD H. MARASHI,

Appellant,

v.

FORBES FURNITURE COMPANY, a Florida corporation, d/b/a FURNITURE SHOWCASE,

Appellee.

_____/

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

CASE NO. 81-269

Decision filed April 7, 1982

Appeal from the Circuit Court
for Orange County,
Maurice M. Paul, Judge.

Thomas F. Lang of
Swann and Haddock, P.A.
Orlando, for Appellant.

David M. Landis of
Clayton & Landis,
Orlando, for Appellee

PER CURIAM.

AFFIRMED.

ORFINGER, UPCHURCH, F., and COWART, JJ.,
concur

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

MOHAMMAD H. MARASHI,

Appellant,

v. CASE NO. 81-269

FORBES FURNITURE COMPANY, etc.,

Appellee.
_____/

DATED: May 12, 1982

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION FOR REHEARING, filed April 20, 1982, is hereby denied.

I hereby certify the foregoing is (a true copy of) the original court order.

FRANK J. HABERSHAW, CLERK

By: /s/ Rowland W. Halliday
Deputy Clerk

(COURT SEAL)

cc: Thomas F. Lang, Esquire
David M. Landis, Esquire

IN THE CIRCUIT COURT
OF ORANGE COUNTY,
FLORIDA

CIVIL NO. 80-6619

FORBES FURNITURE COMPANY,
a Florida corporation,
d/b/a FURNITURE SHOWCASE,

Plaintiff,

vs.

MOHAMMAD H. MARASHI,

Defendant.
_____/

ORDER

After due notice by or to all parties affected, a hearing was held before the court with respect to all matters disposed of by this order.

Upon consideration it is ORDERED that:

Motion for Relief from Judgment is DENIED.

DONE AND ORDERED in chambers at Orlando, Florida this 17th day of June, 1982.

Orlando, Florida,

/s/ Maurice M. Paul
Judge

Copies:

Donald E. Grincewicz, Two W. Central Blvd., Orlando, Fla., 32801
Kenneth M. Meer, Esq., P. O. Drawer B, Winter Park, Fla., 32790
William L. Whiteacre, Esq., 170 E. Washington St., Orlando, Fla., 32801
Thomas F. Lang,. Esq., P. O. Box 7838, Orlando, Fla., 32854

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

MOHAMMAD H. MARASHI,

Appellant,

v. CASE NO. 82-985

FORBES FURNITURE COMPANY, etc.,

Appellee.
_____/

DATED: August 26, 1982

BY ORDER OF THE COURT:

ORDERED that Appellee's MOTION TO DISMISS APPEAL, filed August 9, 1982, is granted and the above-styled appeal is hereby dismissed.

I hereby certify the foregoing is (a true copy of) the original court order.

FRANK J. HABERSHAW, CLERK

By: /s/ Rowland W. Halliday
Deputy Clerk

(COURT SEAL)

cc: Donald E. Grincewicz, Esquire
Paul H. Bowen, Esquire

IN THE SUPREME COURT OF FLORIDA
THURSDAY, SEPTEMBER 30, 1982

MOHAMMAD H. MARASHI, **

Petitioner, **

v. ** CASE NO. 62,671

FORBES FURNITURE ** COMPANY, a Florida ** corporation, d/b/a ** FURNITURE SHOWCASE, **

Respondent. **

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. St. Paul Title Insurance Corp v. Davis, 392 So.2d 1304 (Fla. 1980).

A True Copy
TEST:

/s/
Sid J. White
Clerk Supreme Court

cc: Paul H. Bowen, Esq.
Donald E. Grincewicz, Esquire of Lawrence, Griffin & Landis

IN THE SUPREME COURT OF FLORIDA
TUESDAY, OCTOBER 5, 1982

MOHAMMAD H. MARASHI,	**	
Petitioner,	**	
v.	**	CASE NO. 62,686
FORBES FURNITURE COMPANY, a Florida corporation, d/b/a FURNITURE SHOWCASE,	**	District Court of Appeal, 5th District
	**	No. 82-985
Respondent.	**	

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Pena v. Tampa Federal Savings and Loan Assn., 385 So.2d 1370 (Fla. 1980).

No Motion for rehearing will be entertained by the Court.

A True Copy
TEST:
/s/
Sid J. White
Clerk Supreme Court

C
cc: Hon. Frank J.Habershaw, Clerk
Hon. William D. Gorman, Clerk
Hon. Maurice M. Paul, Judge
Paul H. Bowen, Esquire of Swann & Haddock
Donald E. Grincewicz, Esquire

28 U.S.C. §1257. STATE COURTS; APPEAL; CERTIORARI

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(3) By Writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States."

28 U.S.C. §2101. SUPREME COURT; TIME FOR APPEAL OR CERTIORARI; DOCKETING; STAY

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

RULE 1.330. USE OF DEPOSITIONS IN COURT PROCEEDINGS.

"The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desireable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open Court, to allow the deposition to be used; or (F) the witness is an expert or skilled witness."

RULE 1.460. CONTINUANCES

"(a) Motion For. A motion for continuance may be made only before or at the time the case is set for trial, unless good cause for failure to do so is shown or unless the ground for the motion arose after the action was set for trial.

(b) Contents. The motion shall be in writing. It shall state fully and clearly all of the facts which the movant conceives may entitle him to a continuance. If continuance is sought on the ground of non-availability of a witness, the motion must show when it is believed the witness will be available.

(c) For What Time. No continuance shall be granted for any longer time than the ends of justice require."